

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTHONY J. SPATARO,

Plaintiff,

v.

CIV 08-0274 JCH/LAM

DEPUY ORTHOPAEDICS, INC., et al.,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition (hereinafter, "PF&RD") (*Doc. 36*), filed on November 25, 2008. Defendants DePuy Orthopaedics, Inc. (hereinafter, "DePuy") and Gina Dillard filed timely objections (*Doc. 37*) to portions of the PF&RD and the deadline for filing objections has passed. Plaintiff Anthony J. Spataro did not file any objections to the PF&RD but filed a timely response (*Doc. 38*) to DePuy's and Dillard's objections on December 12, 2008. Additionally, although not provided for in 28 U.S.C. § 636(b)(1) or Fed. R. Civ. P. 72, Defendants DePuy and Dillard filed a reply in support of their objections (*Doc. 39*) on December 23, 2008, and a notice of completion of briefing (*Doc. 40*) on December 24, 2008. The Court has conducted a *de novo* review of those portions of the PF&RD to which DePuy and Dillard object and finds that the objections are without merit. Accordingly, the Court has determined that it will overrule the objections; adopt the PF&RD; and grant Plaintiff's Motion to Remand (*Doc. 5*). The Court will enter a final order, contemporaneously with this order, remanding this case to the Second Judicial District Court of Bernalillo County, New Mexico.

Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, a party may object to a magistrate judge's proposed findings and recommended disposition by filing and serving written objections within ten days after being served with a copy of the proposed findings and recommended disposition. A party may respond to another party's objections within ten days after being served with a copy of the objections. *Id.* When timely objections are filed, the district court must review *de novo* those portions of the proposed findings and recommended disposition to which objections are made. *Id.* In conducting its *de novo* review, the district court is not required to make specific findings but instead may simply indicate that it has undertaken the requisite review. *Garcia v. City of Albuquerque*, 232 F.3d 760, 766-67 (10th Cir. 2000).

Analysis and Conclusion

Defendants DePuy and Dillard object to that portion of the PF&RD in which the Magistrate Judge analyzed the issue of whether Dillard was fraudulently joined in this action for the purpose of defeating diversity jurisdiction. DePuy and Dillard further object to the Magistrate Judge's conclusion that DePuy and Dillard failed to meet their burden of showing that Dillard was fraudulently joined. In their objections, DePuy and Dillard contend, as they did in their response (*Doc. 12*) to Plaintiff's motion to remand (*Doc. 5*), that Dillard was fraudulently joined as a defendant and, therefore, her citizenship should be disregarded for purposes of determining diversity jurisdiction.

The Court has carefully reviewed the record of this case, the PF&RD, the objections to the PF&RD filed by DePuy and Dillard, Plaintiff's response to the objections, DePuy's and Dillard's reply in support of their objections and their notice of completion of briefing. Having done so, the Court finds that the objections are without merit and should be overruled. DePuy and Dillard raise

the same arguments in their objections that they raised in the response to the motion to remand. Therefore, the Court will overrule the objections; adopt the PF&RD; and grant Plaintiff's Motion to Remand (*Doc. 5*). Additionally, the Court will enter a final order, contemporaneously with this order, remanding this case to the Second Judicial District Court of Bernalillo County, New Mexico.

IT IS THEREFORE ORDERED that:

1. The objections asserted in Defendants' Partial Objection to Magistrate Judge's Proposed Findings and Recommended Disposition on Plaintiff's Motion to Remand (*Doc. 37*) are **OVERRULED**;

2. The Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 36*) are **ADOPTED** by the Court;

3. Plaintiff's Motion to Remand (*Doc. 5*) is **GRANTED**; and

4. This case will be **REMANDED** to the Second Judicial District Court of Bernalillo County, New Mexico, pursuant to a final order entered contemporaneously with this order.

IT IS SO ORDERED.



JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE